



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-1034]

RIN1625-AA00

Safety Zone, Delaware River; Marcus Hook, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Delaware River in the vicinity of Marcus Hook, Pennsylvania. The safety zone will temporarily restrict vessel traffic from transiting or anchoring in a portion of the Delaware River while rock blasting, dredging, and rock removal operations are being conducted to facilitate the Delaware River Main Channel Deepening project for the main navigational channel of the Delaware River. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by rock blasting, dredging, and rock removal operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port or his designated representatives.

DATES: This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through March 15, 2017. For the purposes of enforcement, actual notice will be used from December 1, 2016, through

[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-1034 in the “SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Marine Science Technician First Class Tom Simkins, U.S. Coast Guard, Sector Delaware Bay, Waterways Management Division, Coast Guard; telephone (215)–271–4889, e-mail Tom.J.Simkins@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

| | |
|---------|---------------------------------|
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| E.O. | Executive order |
| FR | Federal Register |
| NPRM | Notice of proposed rulemaking |
| Pub. L. | Public Law |
| § | Section |
| U.S.C. | United States Code |

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are impracticable, unnecessary, or contrary to the public interest. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impractical and contrary to the public interest because environmental

restrictions put in place by the National Marine Fisheries Service to protect Shortnose and Atlantic sturgeon require all blasting operations to be conducted between December 1, 2016, and March 15, 2017. Due to the criticality of this phase of the Delaware River Main Channel Deepening project, immediate action is needed to accommodate operations while also ensuring vessels can safely transit through Marcus Hook Range in the Delaware River during this time. Going forward without establishing a safety zone would expose mariners and the public to unnecessary dangers associated with rock blasting, dredging, and rock removal operations. It is impracticable to publish an NPRM because the Coast Guard must establish this safety zone by December 1, 2016. The final details of the rock blasting, dredging, and rock removal operation were not received until November 23, 2016. Publishing an NPRM would be contrary to the public interest since immediate action is necessary to protect the public safety from rock blasting, dredging, and rock removal operations.

For similar reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this temporary rule effective less than 30 days after publication in the *Federal Register*. As noted above, blasting operations must be conducted between December 1, 2016, and March 15, 2017. Due to the need for immediate action, the restriction is necessary to protect life and property. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels, and enhancing public and maritime safety.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port has determined that potential hazards associated with rock blasting,

dredging, and rock removal operations starting December 1, 2016, will be a safety concern for anyone within 500 yards of rock blasting, dredging, and rock removal operations. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the operational area.

IV. Discussion of the Rule

This rule establishes a safety zone between December 1, 2016, and March 15, 2017. The safety zone will cover all navigable waters in the Delaware River within 500 yards of vessels and machinery being used by personnel to conduct rock blasting, dredging, and rock removal operations in the vicinity of Marcus Hook, PA, between the southern end of Marcus Hook Anchorage to the western end of Little Tinicum Island, at the entrance to Darby Creek. The safety zone will be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic, except for the short periods of time when explosive detonation evolutions are being conducted. The blasting detonations will not occur more than three times a day. At all other times, at least one side of the main navigational channel will be open for vessels to transit.

The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while operations are being conducted. For the duration of the project, in the vicinity of the rock blasting, rock removal, and dredging operation, one side of the main navigational channel will be closed. Vessels wishing to transit the safety zone in the main navigational channel may do so if they can make satisfactory passing arrangements with drill boat APACHE or the dredge TEXAS in accordance with the Navigational Rules in 33 CFR subchapter E via VHF-FM channel 13 at least 30 minutes prior to arrival. If vessels are unable to make satisfactory passing

arrangements with the drill boat APACHE or the dredge TEXAS, they may request permission from the Captain of the Port, or his designated representative, on VHF-FM channel 16. All vessels must operate at the minimum safe speed necessary to maintain steerage and reduce wake.

No vessels may transit through the safety zone during times of explosives detonation. During rock blasting detonation vessels will be required to maintain a 500 yard distance from the drill boat APACHE. The drill boat APACHE will make broadcasts, via VHF-FM channels 13 and 16, at 15 minutes, 5 minutes, and 1 minute prior to detonation, as well as a countdown to detonation on VHF-FM channel 16. Sector Delaware Bay will ensure significant notice will be given to the maritime community of dates and times of blasting via broadcast notice to mariners on VHF-FM channel 16. After every explosive detonation a survey will be conducted to ensure the navigational channel is clear for vessels to transit. The drill boat APACHE will broadcast, via VHF-FM channel 13 and 16, when the survey has been completed and the channel is clear to transit. Vessels wishing to transit the safety zone in the main navigational channel may do so if they can make satisfactory passing arrangements with drill boat APACHE or the dredge TEXAS in accordance with the Navigational Rules in 33 CFR subchapter E via VHF-FM channel 13 at least 30 minutes prior to arrival. If vessels are unable to make satisfactory passing arrangements with the drill boat APACHE or the dredge TEXAS, they may request permission from the Captain of the Port, or his designated representative, on VHF-FM channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders

related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and traffic management of the safety zone. The Coast Guard does not anticipate a significant economic impact because the safety zone will be enforced in an area and in a manner that does not conflict with transiting commercial and recreational traffic, except for the short periods of time when explosive detonation evolutions are being conducted. The blasting detonations will not occur more than three times a day. At all other times, at least one side of the main navigational channel will be open for vessels to transit. Moreover, the Coast Guard will work in coordination with the pilots to ensure vessel traffic is limited during the times of detonation and Broadcast Notice to Mariners are made via VHF-FM marine channel 13 and 16 when blasting operations will occur.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during

rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to anchor in or transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone in force from December 1, 2016, through March 15, 2017, that prohibits entry within 500 yards of vessels and machinery being used by personnel conducting rock blasting, dredging, and rock removal operations in the Delaware River near Marcus Hook, PA between the southern end of Marcus Hook Anchorage to the western end of Little Tinicum Island, at the entrance to Darby Creek. It is categorically excluded from further review under paragraph 34(g) of figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

H. Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and

3(b)(2) of Executive order 12988, Civil Justice Reform to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

List of Subjects 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T05-1034, to read as follows:

§ 165.T05-1034 Safety Zone, Delaware River; Marcus Hook, PA

(a) **Regulated area.** The following area is a safety zone: all the waters of the Delaware River within 500 yards of vessels and machinery performing rock blasting, rock removal, and dredging operations, in the vicinity of Marcus Hook, PA, between the southern end of Marcus Hook Anchorage to the western end of Little Tinicum Island, at the entrance to Darby Creek.

(1) Vessels wishing to transit the safety zone in the main navigational channel may do so if they can make satisfactory passing arrangements with the drill boat APACHE or the dredge TEXAS in accordance with the Navigational Rules in 33 CFR subchapter E via VHF-FM channel 13 at least 30 minutes prior to arrival. If vessels are unable to make satisfactory passing arrangements with the drill boat APACHE or the dredge TEXAS, they may request permission from the Captain of the Port, or his

designated representative, on VHF-FM channel 16.

(2) The operator of any vessel requesting to transit through the safety zone shall proceed as directed by the drill boat APACHE, the dredge TEXAS or the designated representative of the Captain of the Port and must operate at the minimum safe speed necessary to maintain steerage and reduce wake.

(3) No vessels may transit through the safety zone during times of explosives detonation. During rock blasting detonation vessels will be required to maintain a 500 yard distance from the drill boat APACHE. The drill boat APACHE will make broadcasts, via VHF-FM Channel 13 and 16, at 15 minutes, 5 minutes, and 1 minute prior to detonation, as well as a countdown to detonation on VHF-FM Channel 16.

(4) After every explosive detonation a survey will be conducted to ensure the navigational channel is clear for vessels to transit. The drill boat APACHE will broadcast, via VHF-FM channel 13 and 16, when the survey has been completed and the channel is clear to transit. Vessels requesting to transit through the safety zone shall proceed as directed by the designated representative of the Captain of the Port and contact the drill boat APACHE on VHF-FM channel 13 to make safe passing arrangements.

(b) Definitions. As used in this section:

Captain of the Port means Captain of the Port Delaware Bay. The Captain of the Port is also the Commander, U.S. Coast Guard Sector Delaware Bay, Philadelphia, PA.

Captain of the Port Delaware Bay means the Commander, U.S. Coast Guard Sector Delaware Bay, Philadelphia, PA.

Designated representative means any Coast Guard commissioned, warrant, or

petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

(c) Enforcement. The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(d) Enforcement period. This rule will be enforced from December 01, 2016, through March 15, 2017, unless cancelled earlier by the Captain of the Port.

Dated: December 1, 2016

Benjamin A. Cooper
Captain, U.S. Coast Guard,
Captain of the Port Delaware Bay.